



MULTIMEDIA

STUDENT IDENTIFICATION NO

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FINAL EXAMINATION

TRIMESTER 1, 2021/2022

UNL1612 – CONTRACT LAW I

(All Sections/Groups)

24 NOVEMBER 2021

Reading Time : 9.15 am – 9.30 am
(15 Minutes)

Answering Time : 9.30 am – 12.30 pm
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they read the paper and make rough notes **ONLY** on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 Pages and 4 Questions only.
3. This Question paper consists of 2 sections. Attempt **ONE** question only in **Section A** and all **THREE** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the examination hall CLEAN and ORIGINAL copy of:
 - i. **Contracts Act 1950 (Act 136)**
 - i. **Specific Relief Act 1950 (Act 137)**
 - ii. **Civil Law Act 1956 (Act 67)**

"Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: Answer either Question 1(a) or 1 (b)**QUESTION 1(a)**

*"It is germane to mention that the doctrine of **privity of contract** is a creature of the common law. The doctrine means that a non-party cannot bring an action on the **contract**. But the doctrine is not universally acceptable. For instance in *FC Seck Trading As Oversea Structural Company v Wong And Lee* [1940] MLJ 182 where the plaintiff there sued for money paid to the defendants there under a mistake of fact, Terrell Acting CJ held that the doctrine of **privity of contract** should not apply. And the majority of the High Court of Australia (Mason CJ, Wilson J and Toohey J) were of the view in *Trident General Insurance Co Ltd v McNiece Bros Proprietary Ltd* (1988) 165 CLR 107 that the time had arrived for the rejection of the **privity** doctrine. Our Contracts Act 1950 (Act 136) has no express provision pertaining to the doctrine of **privity of contract**. In fact, Kepong Prospecting gives the gloom picture that the doctrine still applies in Malaysia. Indeed Mohamed Dzaiddin J (who later rose to be the Chief Justice of Malaysia) relied on Kepong Prospecting and aptly said in *Fima Palmbulk Services Sdn Bhd v Suruhanjaya Pelabuhan Pulau Pinang & Anor* [1988] 1 MLJ 269 at p 271....It is clear that the English doctrine of **privity of contract** applies to our law of contract."*

(Per Abdul Malik Ishak JCA in the case of *Razshah Enterprise Sdn Bhd v Arab Malaysian Finance Bhd* [2009] 2 MLJ 102)

Discuss the above statement and explain whether there are exceptions to the **privity** rule in Malaysia with reference to the existing law and Malaysian cases.

(Total: 25 Marks)

Or

Continued..

QUESTION 1(b)

"Courts have always set their face against illegality in any contract. It is very well settled that the courts take judicial notice of such illegality and refuse to enforce the contract, and such judicial notice may be taken at any stage, either at the court of first instance or at the appellate stage irrespective of whether illegality is pleaded or not where the contract is ex facie illegal. When the contract is not ex facie illegal, then on the question of pleadings, there is only one situation where illegality need not be pleaded when the court can still take judicial notice of illegality and refuse to enforce it. The situation is when facts which have not been pleaded emerge in evidence in the course of the trial showing clearly the illegality, eg the illegal purpose of the contract, or its illegal consideration, with the presence of all relevant circumstances, see eg Palaniappa Chettiar v Arunasalam Chettiar, Leong Poh Chin v Chin Thin Sin, and North Western Salt Co Ltd v Electrolytic Alkali Ltd just to mention a few. The existence of such a situation in the instant appeal is warranted by the facts that emerged in evidence, including affidavit evidence."

Lim Kar Bee v Duofortis Properties (M) Sdn Bhd (1992) 2 MLJ 281

Explain the above statement and further discuss the illegal contract with reference to Contracts Act 1950 and Malaysian cases.

(Total: 25 marks)

SECTION B: Answer All Questions**QUESTION 2**

Matthew had entered into a first tenancy agreement with Mr Chai from 2000 to 2004. The tenancy agreement was extended for three more terms, and the fourth tenancy agreement was only executed on 6 February 2019 for another two years. Mr Chai sends a WhatsApp message and informs his intention to sell the house (the said property) for RM400,000. Matthew sends a reply on WhatsApp that he is interested in purchasing the property and stated that he is willing to buy the said property for RM350,000. Mr Chai did not reply to the message although he had read the WhatsApp message.

Matthew then called Mr Chai and left a voice message that stated he was willing to buy the said property for RM400,000. Mr Chai did not notice the voice message and deleted all messages without listening to the voice message.

Mr Chai then sold the said property to Selena for RM500,000 during the fourth tenancy agreement and the transfer of ownership was completed sometime in January 2021. Matthew claimed that there was a contract between him and Mr Chai.

Advised Mr Chai and Matthew.

(Total: 25 marks)

Continued...

QUESTION 3

(a) Aishah lost her cat, and Jeremy, her best friend, offered his assistance searching for the cat. Jeremy managed to find Aishah's cat and returned it to Aishah. Aishah then promised to reward Jeremy RM100 for searching for the cat. After a while, Jeremy asked about the reward to Aishah, and she denied the claim.

Hassan had just opened a law firm in Bukit Rambai in 2019. Mr Tan, the landlord, promised that if Hassan continues to rent the property within three years, he will not raise the rent. After a while, Hassan's law firm became famous, and he received many clients. In 2021, Mr Tan noticed that Hassan was doing very well and decided to increase the rent. Hasan refused to accept the new rent and claimed that Mr Tan had promised that there would be no increase in rent within three years.

Advise both Jeremy and Hassan on the above situations.

(15 marks)

(b) Emir entered into a sales and purchase agreement ('the agreement') with Puan Hasanah to purchase Puan Hasanah's land ("the land") in February. Emir did not have the knowledge that Puan Hasanah suffered from Alzheimer's disease. Sometimes Puan Hasanah remembers the event that happened and sometimes, she forgets about it.

On the day of execution of the agreement, Puan Hasanah is not well and has a high fever. After completing the transfer of the land between Emir and Puan Hasanah, she asked her daughter about her land and her daughter told her that she had sold the land. Puan Hasanah could not remember the event of executing the agreement.

Advise Puan Hasanah.

(10 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Sofia went to Family Store in Ayer Keroh to purchase a vacuum cleaner. As she enters the parking lot, she notices a notice board, but it is too small to read. She took the parking ticket and put it in her handbag without reading the parking ticket.

She entered into Matahari Electric Shop ("the shop"). The sales assistant, Micheal, showed her a high-end vacuum cleaner which cost RM4,900. He claimed that the vacuum cleaner has a two-year warranty and failed to mention that the two-year warranty does not include the vacuum cleaner's motor.

When Sofia reached her car, she noticed that her right window was smashed and her car radio was stolen. She was devastated and informed the manager of Family Store on this matter. The manager claimed that there are not liable for the damage done to the vehicle. He further explained that there is an exclusion clause at the notice board in front of the parking lot.

Then Sofia returned home and tried to use the vacuum cleaner. The vacuum cleaner was louder than usual and it didn't sound right. She brought the vacuum cleaner to the shop. She was told the vacuum cleaner's motor ('the motor") wasn't functioning and they tried to fix it, then smoke came out. The shop told Sofia that the motor was gone and she would have to replace it. The shop further explained that the motor does not come with a two-year warranty. Sofia is not satisfied with the explanation given by the shop.

Now, Sofia wants to take action against Family Store and Matahari Electric Shop.

(Total: 25 marks)

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